IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 733 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE N.G.NANDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GANESH @ GUDDI KISHANBHAI KAHAR

Versus

DEPUTY COMMISSIONER OF POLICE

Appearance:

1. Special Criminal Application No. 733 of 2003

HL PATEL ADVOCATES for Petitioner No. 1

RULE SERVED for Respondent No. 1

MR. L.R. PUJARI, LD. APP for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE N.G.NANDI

Date of decision: 11/02/2004

ORAL JUDGEMENT

1. Mr. L.R. Pujari, learned APP has placed on

record the affidavit-in-reply for respondent no.1. It is stated by Mr. V.H. Patel, learned advocate for the petitioner that, no rejoinder is to be filed to the affidavit in reply filed by the respondent no.1.

2. In this petition under article 226 of the Constitution of India, the petitioner has been challenging the order of externment dated 16-4-2003 passed under section 56 (B) of the Bombay Police Act (Annexure-B) passed by respondent no.1.

The petitioner was served with a showcause notice dated 14-11-2002 (Annexure-A), issued by the Assistant Police Commissioner 'D' Division, Vadodara City, alleging that the petitioner is a head-strong person dealing in the sale of country liquor and administering threat to the citizens and the business people of the area, has been demanding vehicles form them and also extorting money; that the petitioner has formed a group of persons doing illegal / criminal acts and operating in the city of Vadodara and in contiguous areas, namely Vadadala, Baliyapura, Sherki, Waghodia etc. and has been bringing stock of country liquor in these villages surreptitiously in unlawful manner through their own vehicles and vehicles taken on hire / payment and has been selling the liquor; that the petitioner has been keeping deadly weapons like knife, razor and the petitioner is a vindictive person. The showcause then proceed to refer to two cases registered against the petitioner under section 66 (B) , 65 (E) and 81 of the Bombay Prohibition Act. Showcause notice also refers to three unregistered cases / incidents of 22-9-2002, 29-9-2002 and 2-10-2002 wherein petitioner is alleged to have indulged into aforesaid activities in Kirtisthumbh area, Vithal Society area, and Viswamitri road at night time. On these allegations the petitioner vide order dated 16-4-2003 (Annexure-B) has been externed for a period of two years from the City of Vadodara within the jurisdiction of Commissioner of Police, Vadodara, Vadodara (Rural), Anand, Panchmahals, Narmada and Bharuch districts.

3. It is submitted by Mr. V.H. Patel, learned advocate for the petitioner that the impugned order for externment (Annexure-B) is liable to be quashed and set aside and the petitioner be set at liberty forthwith for the reason that the impugned order is passed under section 56 (B) of the Bombay Police Act; that the witnesses of the unregistered cases are said to have stated that, they were the victims of the illegal activities of the petitioner and his associates and because of the apprehension the complaint was not

registered by the victims and nobody else also prepared to come forward for filing complaint against the petitioner for the reason of safety to their person and property. It is further submitted that, no statement of persons otherthan the victims have been recorded so as to reach the subjective satisfaction of the detaining authority as regards the other persons.

4. It is suggested from the show cause notice (Annx.A) that, three unregistered cases have been referred to wherein the petitioner and his associates are alleged to have beaten the persons, saying, as to why police was informed about illegal activities of the petitioner and his associates. The identity of the witnesses who are said to have given statements on 22-9-2002, 29-9-2002 and 2-10-202 have been suppressed / concealed, stating that the witnesses did not want their names to be made public for the reason of safety to their person and property. No statement of persons other than the victims of the petitioner and his associates in the incident has been recorded.

5. In the decision rendered in Special Criminal Application No. 1303 of 1992 by the Division Bench of this Court (followed in Special Criminal Application No. 991 of 2003 by this Bench), in para-2 thereof while dealing with the case of externment under section 56 the Bombay Police Act, the Division Bench observed as under :-

" In the impugned order of externment the Sub-Divisional Magistrate has stated that the victims of the incidents are not willing to come forward to depose against the petitioner because of his fear. Under Section 56 of the Bombay Police Act the externing authority must form a subjective opinion that witnesses are not willing to come forward to give evidence in public against the person sought to be externed by reason of apprehension on their part as regards the safety of their person or property. This requirement is not clearly satisfied in the present case. It is clear that the opinion formed by the Sub-Divisional Magistrate is only as regards the witnesses, who are the victims of the said incident and not other witnesses. This opinion would clearly not be the requisite opinion contemplated by the mandatory requirement of Section 56. Therefore, the impugned order of externment passed by the Sub-Divisional Magistrate, Palitana at Annexure-B and the

impugned order passed by the State Government at Annexure-C would be illegal. We are supported in our view by the unreported judgment of this Court in Special Criminal Application No. 18 of 1969, relevant portion of which is reproduced in the case of Navabkhan Vs. State of Gujarat, reported in AIR 1974 SC 1471 at page - 1474, para-5. "

It is not disputed that the statements recorded for reaching the subjective satisfaction for the purpose of passing the impugned externment order are those of the victims and no statement of any other person other than the victims have been recorded for reaching the subjective satisfaction by the externing authority. It has been clearly laid down in the above referred decision of the Division Bench of this Court that, mandatory requirement of Section 56 of the Act requires not only subjective satisfaction as regards the victims, but Section 56 of the Act also requires the subjective satisfaction as regards the other persons.

6. In the instant case subjective satisfaction recorded by the externing authority is only as regards the witnesses who are the victims of the incidents and there is no subjective satisfaction with regard to other persons, i.e. persons other than the victims of the petitioner and his associates.

7. In my opinion, the present case is squarely covered by the decision of the Division Bench rendered in Special Criminal Application No. 1303 of 1992 and therefore, the present petition will have to be allowed by quashing and setting aside the impugned order of externment dated 16-4-2003 (Annexure-B) and the order dated 17-5-2003 (Annexure-C).

This petition is granted and accordingly allowed. The impugned order of externment dated 16-4-2003 (Annexure-B) passed by the Respondent No.1 and the order dated 17-5-2003 (Annexure-C) passed by Respondent No.2 against the petitioner - Ganesh @ Guddi Kishanbhai Kahar, are quashed and set aside. Rule made absolute. Direct service permitted.

Dt: 11-2-2004 (N.G. Nandi, J)

/vgn